



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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February 14, 1997

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CC 96-98

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Petition of the Pennsylvania Public Utility Commission
for Expedited Waiver of the 10-Digit Dialing Requirement
of 47 C.F.R. SEC. 52.19 for 412 NPA Overlay Area Code Relief

Dear Secretary Caton:

Enclosed is an original and four (4) copies of the Petition of the Pennsylvania Public Utility Commission for Expedited Waiver of the 10-Digit Dialing Requirement of 47 C.F.R. SEC. 52.19 for 412 NPA Overlay Area Code Relief.

Please do not hesitate to contact the undersigned if you should have any questions regarding this matter.

Very truly yours,

Maureen A. Scott
Assistant Counsel

MAS/ms

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Local) CC Docket No. 96-98
Competition Provisions in the)
Telecommunications Act of 1996)

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**PETITION OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
FOR EXPEDITED WAIVER OF THE 10-DIGIT DIALING REQUIREMENT OF
47 C.F.R. SEC. 52.19 FOR 412 NPA OVERLAY AREA CODE RELIEF**

I. Introduction.

On August 8, 1996, the Federal Communications Commission ("FCC") issued its Second Report and Order in this proceeding imposing, inter alia, a mandatory 10-digit local dialing requirement upon overlay usage by State commissions for all local calls in the area served by the pre-existing and new overlay area codes. The FCC's mandatory 10-digit dialing requirement is in conflict with the Pennsylvania Public Utility Commission's ("PaPUC") June, 1996 412 Area Code Order which imposes an overlay and requires 7-digit dialing where technically feasible.

The PaPUC filed a Petition for Reconsideration ("PFR") with the FCC on October 7, 1996, seeking, inter alia, reconsideration of the mandatory 10-digit dialing requirement and other requirements of the Second Report and Order.¹ As of this date, the FCC has not yet acted on the approximately 20 petitions for reconsideration of its Second Report and Order that were filed

¹The PaPUC also filed on November 20, 1996, a Response in Support of the Petition for Reconsideration filed by the New York State Department of Public Service. The PaPUC's request for expedited waiver of the 10-digit dialing requirement is without prejudice to its right to continue to challenge the FCC's jurisdiction over intrastate dialing parity requirements.

by various parties, including the PaPUC. The PaPUC files this Petition for expedited waiver of the 10-digit dialing requirement, since regardless of the outcome of the pending PFRs of the Second Report and Order, circumstances justify a waiver of this requirement in the 412 area code.

Finally, the PaPUC is requesting expedited action by the FCC on its Petition for Waiver because the cut-over date for 412 area code overlay implementation is May 1, 1997, preceding a projected exhaust date of June 30, 1997. Consequently, affected carriers have only a mere 3 months remaining to make all of the necessary central office changes and to educate their customers.

II. Background.

On June 20, 1996, the PaPUC adopted an order addressing the problem of a number shortage in the 412 area code, which is Pittsburgh and the surrounding metropolitan area.² In its order, the PaPUC found, based upon the record evidence, that implementation of an all-services overlay was appropriate. The PaPUC ordered implementation of an overlay consistent with the guidelines set out by the FCC in its Ameritech Order.³ However, because the PaPUC found that 10-digit dialing for local calling was undesirable from a customer standpoint, it ordered that "[a]ll LECs shall continue the use of seven-digit dialing within each area code to the extent technically feasible and for so long as it remains feasible. Ten-digit dialing may become permissive with institution of the overlay, but should not become mandatory until

²Petition of NPA Relief Coordinator Re: 412 Area Code Relief Plan, Docket No. P-000961027 (Order adopted June 20, 1996) ("412 Area Code Order").

³In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, 10 FCC Rcd 4596 (1995).

necessary."⁴

Subsequently, on August 8, 1996, the FCC adopted its Second Report and Order in which it addressed various numbering administration, local dialing and area code exhaustion issues. In the Second Report and Order, the FCC authorized states to continue the task of overseeing the introduction of new area codes subject to the Commission's numbering administration guidelines. Second Report and Order at para. 281. The FCC also correctly recognized the unique position of States to determine the type of area code relief best suited to local conditions:

As we note above, states are uniquely situated to determine what type of area code relief is best suited to local circumstances. Certain localities may have circumstances that would support the use of area code overlays. Most significantly, area code overlays do not require any existing customers to change their telephone number, in contrast to geographic splits. Additionally, in some metropolitan areas continuously splitting area codes will result in area codes not covering even single neighborhoods, a situation that can only be avoided by implementing overlays. Finally, area code overlays can be implemented quickly.

Second Report and Order at para. 283.

While the PaPUC strongly supports the FCC's further conclusion not to prohibit or severely restrict the states' right to choose overlay plans (Second Report and Order at para. 282), the two additional conditions which the FCC imposed on the use of all-services overlays by State commissions in the future are likely to have this unintended effect. These two additional conditions are discussed in the following passage from the FCC's Second Report and

⁴412 Area Code Order at p. 16.

Order:

Specifically, we will permit all-services overlay plans only when they include: (1) mandatory 10-digit local dialing by all customers between and within area codes in the area covered by the new code; and (2) availability to every existing telecommunications carrier, including CMRS providers, authorized to provide telephone exchange service, exchange access, or paging service in the affected area code 90 days before the introduction of a new overlay area code, of at least one NXX in the existing area code, to be assigned during the 90-day period preceding the introduction of the overlay.

Second Report and Order at para. 286.

As already noted, the PaPUC is concerned, in particular, with the FCC's mandatory 10-digit dialing requirement given the conflict this has now created with its own 412 Area Code Order which requires 7-digit dialing where technically feasible. Moreover, as will be discussed in more detail later, the underlying justification for this additional requirement is flawed, and in any event, special circumstances exist in the 412 area code which do not warrant its application in this case. The FCC's stated justification for mandatory 10-digit dialing is contained in the following passage from its Second Report and Order (para. 287):

We are requiring mandatory 10-digit dialing for all local calls in areas served by overlays to ensure that competition will not be deterred in overlay area codes as a result of dialing disparity. Local dialing disparity would occur absent mandatory 10-digit dialing, because all existing telephone users would remain in the old area code and dial 7-digits to call others with numbers in that area in that area code, while new users with the overlay code would have to dial 10-digits to reach any customers in the old code. When a new overlay code is first assigned, there could be nearly 8 million numbers assigned in the old code, with just a few thousand customers using the new overlay code. If most telephone calls would be to customers in the original area code, but only those in the new code must dial ten-digits, there would exist a dialing disparity, which would increase customer confusion. Customers would find it less attractive to switch carriers because

competing exchange service providers, most of which will be new entrants to the market, would have to assign their customers numbers in the new overlay area code, which would require those customers to dial 10-digits when they would only have to dial 7-digits for most of their other calls. Requiring 10-digit dialing for all local calls avoids the potentially anti-competitive effect of all-services are code overlays.

While the PaPUC filed a PFR of, inter alia, these provisions of the FCC's Second Report and Order on October 7, 1996, due in large part to the conflict with its 412 Area Code Order, the FCC has not yet acted on the PaPUC's PFR and the PFRs of approximately 19-20 other parties seeking reconsideration of these and/or other provisions of the FCC's Second Report and Order. Further, the FCC has given no indication of when it will act on the PFRs of the Second Report and Order. In addition, the dialing parity provisions of the FCC's Second Report and Order are now the subject of an appeal before the Eighth Circuit Court of Appeals. It is also uncertain when the pending appeal will be decided; however, in all likelihood, it will not be decided before the necessary steps must be taken by affected carriers to implement the 412 overlay.

As will be discussed below, the PaPUC believes that regardless of the outcome of the FCC's reconsideration of its Second Report and Order, circumstances in the 412 area code covering Pittsburgh and surrounding metropolitan areas justify a waiver of the mandatory 10-digit dialing requirement.

III. Discussion.

While the PaPUC does not believe that the additional conditions on overlay usage imposed by the Second Report and Order are justified, the PaPUC has raised its arguments in this regard in its PFR filed on October 7, 1996, and therefore, will not reiterate all of its

objections here. Nonetheless, the PaPUC strongly believes that if the FCC does not reconsider the additional conditions, circumstances within the 412 area code, including Pittsburgh and surrounding metropolitan areas, justify a waiver of the 10-digit dialing requirement imposed on overlay use in this instance.⁵

First, the FCC premised its additional requirements on the use of overlays by State commissions on dialing disparity concerns, and in particular on its finding that without a 10-digit dialing requirement throughout the overlay area, there would be a disparate, adverse impact upon competitive local exchange carriers ("CLECs") serving the affected area⁶ However, with the availability of interim number portability at this time throughout the 412 area code and permanent number portability by mid-1998 in the Pittsburgh MSA, the concerns identified by the FCC are significantly lessened. With number portability, existing customers that choose to switch to a new service provider, are able to keep their current telephone numbers. This significantly diminishes, if not alleviates altogether, one of the primary concerns underlying the mandatory 10-digit dialing requirement identified by the FCC in its Second Report and Order, most notably that existing customers will choose not to change service providers because with an overlay they will be unable to keep their existing telephone numbers. In reality, with interim number portability, and later permanent number portability, customers who switch to new

⁵The second, or 90 day requirement, does not create a problem in this instance, and hence the PaPUC is not requesting a waiver of this requirement.

⁶Second Report and Order at paras. 286-289. The FCC stated that "[w]hen a new overlay code is first assigned, there could be nearly 8 million numbers assigned in the old code.... Customers would find it less attractive to switch carriers because competing exchange service providers, most of which will be new entrants to the market, would have to assign their customers numbers in the new overlay code..." Id at para. 287.

providers, will now have the ability to keep their existing telephone numbers.

Second, and more important, however, is recent information provided by the Bell Atlantic Code Administrator to the PaPUC at its request, relating to actual and projected NXX and number assignment in the 412 area code. As of December 31, 1996, the 755 usable NXX codes were assigned as follows:

Bell Atlantic Pennsylvania	382 (51%)
Other Incumbent LECs	113 (15%)
CLECs (Including wireless providers)	202 (27%)
Unassigned	58 (8%)

Under existing conservation measures, the Code Administrator projects that all or nearly all 58 remaining 412 NXXs are expected to be assigned to CLECs and other competitors by June 30, 1997. Consequently, this will mean that by the time NXX codes exhaust in 412, CLEC and other competitors will control approximately 260 NXXs, or one of every three usable NXXs in the 412 area code and will have approximately 2.6 million 412 telephone numbers assigned or assignable to their customers.⁶ Furthermore, based upon current projections, when 412 NXX codes exhaust, CLECs and other competitors will in all likelihood still have over 2 million 412 numbers available for assignment to existing and new customers. These actual and projected 412 NXX and number assignments undercut the assumptions in the Second Report and Order underlying the FCC's 10-digit dialing requirement for overlays, in particular the assumption that competitive carriers will have considerable difficulty in obtaining 412 area code NXXs and

⁶When the Numbering Administrator initially filed his Relief Petition with the PaPUC in March 1996, only 2.64 million of the 7.55 million usable 412 numbers were actually assigned to and being used by end user customers.


accordingly will have to assign customers numbers in the new area code. Consequently, numbering conditions in the 412 area code do not support the assumptions identified by the FCC which the FCC believes require imposition of a mandatory 10-digit dialing requirement. To the contrary, conditions in the 412 area code support a waiver of the mandatory 10-digit dialing requirement.

Finally, it is critical that the FCC grant this relief on an expedited basis because the cut-over date for overlay implementation in the 412 area code is May 1, 1997. In order to accommodate this change, technical and central office changes must be made by not only Bell Atlantic, but also by many other carriers including ILECs, CLECs and wireless providers operating in the 412 area code. As it now stands, time is running short in order to accommodate all of the changes necessary for overlay implementation by May 1, 1997. In addition, most companies are now in the process of finalizing educational programs for their customers on the changes that will be occurring in conjunction with implementation of the overlay in the Pittsburgh market. These programs must begin very soon in order to be timely and effective. Consequently, it is critical that the FCC take expedited action on this matter so that both carriers and customers will be prepared for the changes associated with 412 overlay implementation on May 1, 1997.

IV. Conclusion.

For all of the foregoing reasons, the PaPUC respectfully requests that the FCC waive the mandatory 10-digit dialing requirement for the 412 NPA overlay area code relief plan. Further, PaPUC requests that the FCC grant this waiver on an expedited basis given the cut-over date for overlay implementation of May 1, 1997.

Respectfully submitted,


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Dated: February 14, 1997.